

Martinez, Kathleen - OSHA

From: William Snyder [wilb1@earthlink.net]
Sent: Tuesday, November 25, 2003 1:08 PM
To: Martinez.Kathleen@dol.gov
Subject: Silica SBREFA Comments

Attached are my personal comments, "MyComments".

Two other documents containing comments with which I agree, and which you have probably already received are also attached.

Thank you for the opportunity to participate in this process.

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11/25/2003

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SBREFA PANEL COMMENTS ON THE DRAFT STANDARDS FOR CRYSTALLINE SILICA

I have given a great deal of thought to developing some comments that would help OSHA implement a rule that is workable and effective. I am now of the opinion that although I will certainly try, is doubtful my business will comply with the majority of the regulation.

My most significant problems:

1. Any rule that requires medical evaluation or monitoring is very difficult to comply with. OSHA considers the expense of monitoring one employee during a year, but fails to realize that I might have three or four employees filling a certain position over a year. Turnover is especially high in laboring and driving jobs. Record keeping is also a much greater burden, and in many instances, I have employees that quit after a few weeks.

2. My employees smoke, chew, dip, eat and drink on the job. Most of my laborers come to work at 6:00AM with three sandwiches and a Thermos of coffee just to get to lunch. Many of them work outside, so they do not have smoke breaks, they smoke all the time. If they don't smoke, then they probably use smokeless tobacco. Requiring employees to clean up before any of these activities is impractical. If I prohibit these activities, I imagine my turnover will just get higher.

3. Installing HEPA filters on mobile equipment will be a HUGE expense. I will have to buy new ROPS that are equipped with air conditioning and add HEPA filtration. Most ROPS will cost around \$25000, without the air conditioning and HEPA filters. I can not modify ROPS to enclose the cab and add AC, they can not be cut, welded or drilled. Even equipment that has a good ROPS will require a replacement that can accept AC. I estimate my expense to equip my fleet with HEPA filters to be somewhere around \$1,000,000.00

4. What do we do with all the material those HEPA filters remove ?? We are going to have a lot of potentially hazardous material. There is no mention of how to dispose of this waste. During the Monday conference call, one of the OSHA representatives seemed to indicate it would be fine to put it in the dumpster. I just don't believe that. Perhaps someone should ask the garbage companies what they think about having this stuff in their dumpsters. How do we get it from the filter to the disposal site ? That is expensive, too. If the material is just dumped out on the ground, we might have just created a situation that is potentially more harmful than the problem we are trying to fix.

5. I have read much about the cost analysis that OSHA performed, and have concerns about their accuracy. I would like to shop where OSHA does.

There is plenty of good comments provided by others that give a more realistic estimate of costs associated with this rule, and I have attached a copy.

6. I'm not sure anyone has demonstrated there is a problem. OSHA has provided little data regarding the extent of occupational silicosis in the US, and seems to rely heavily on China and South Africa. From the other side, there is a valid argument that the problem is statistically small, and may be better addressed with existing regulations.

7. Mining may be the most serious producer of respirable silica, but OSHA doesn't regulate mines, MSHA does. MSHA already has a dust standard and conducts testing regularly at all US mine sites. OSHA doesn't seem to be aware of this wealth of data. Does OSHA intend to enforce the Silica Standard on mine properties ?

8. There is no good way to measure silica exposure, and no objective way to determine a baseline condition for a new employee. I certainly do not want to hire a new driver that used to be a dry wall finisher and be responsible for subsequent medical problems. Even if he is in a clean, air conditioned truck cab running over the road, how do I prove his silicosis is the result of previous employment. Normally, I wouldn't monitor an over the road driver for silicosis.

9. OSHA regulations tend to be enforced at their most restrictive logical extension. Rules that can be interpreted in a more punitive and restrictive way will evolve into a rule that defies the original intent. Many rules in this standard are open for a more restrictive interpretation. Several times during the Monday conference call, an OSHA representative commented "Well, that is not our intent". If it is not the intent, then write the rule so that it can not be misinterpreted. It might even be a good thing to indicate the intent of each rule.

10. Many of my laborers work in hot, dirty conditions. Expecting them to wear a Tyvek suit, hard hat, respirator, gloves and safety glasses is just too much. There is no way a man is going to use a respirator or wear a bunny suit in summer heat.

11. OSHA standards tend to be used by the plaintiffs bar to pursue civil cases against business. This rule will likely fuel an already poised and prepared silica lawsuit storm that will leave a lot of small business crippled by punitive judgments, excessive insurance premiums and legal expenses.

12. I am against adopting the proposed silica rule. Should it be adopted in a substantially similar form to that proposed, I will make every attempt to comply. However, I expect that my efforts will fall short of the perfect execution that OSHA requires. I will not be able to spend tens of thousands of dollars complying with this standard. I doubt this will put out of business, but I would not bet on that.